

SENATE BILL No. 569

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-31.

Synopsis: County regulation of residential rental premises. Provides that the International Property Maintenance Code applies to a residential lease. Requires a landlord to designate a local agent. Requires a landlord to make certain disclosures to a tenant. Provides that a rental premises leased under a residential lease may not be leased or occupied unless the rental premises has annually been issued a certificate of compliance by the county in which the rental premises is located. Requires a county legislative body to adopt an ordinance to designate or establish a department to implement the statute. (In Marion County, the statute designates the department of metropolitan development.) Requires the adopting ordinance to provide for implementation of the statute. Requires inspections of rental premises under certain circumstances. Provides for civil penalties for violations and other remedies.

Effective: July 1, 2009.

Breaux

January 20, 2009, read first time and referred to Committee on Local Government.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 569

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 32-31-2.9-2, AS AMENDED BY P.L.22-2007,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 2. As used in this chapter, "residential
4 landlord-tenant statute" refers to any of the following:

5 (1) IC 32-31-3.

6 (2) IC 32-31-4.

7 (3) IC 32-31-5.

8 (4) IC 32-31-6.

9 (5) IC 32-31-7.

10 (6) IC 32-31-8.

11 (7) IC 32-31-9.

12 **(8) IC 32-31-10.**

13 SECTION 2. IC 32-31-8-5 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. **(a)** A landlord shall
15 do the following:

16 (1) Deliver the rental premises to a tenant in compliance with the
17 rental agreement, and in a safe, clean, and habitable condition.

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(2) Comply with all health and housing codes applicable to the rental premises.

(3) Make all reasonable efforts to keep common areas of a rental premises in a clean and proper condition.

(4) Provide and maintain the following items in a rental premises in good and safe working condition, if provided on the premises at the time the rental agreement is entered into:

(A) Electrical systems.

(B) Plumbing systems sufficient to accommodate a reasonable supply of hot and cold running water at all times.

(C) Sanitary systems.

(D) Heating, ventilating, and air conditioning systems. A heating system must be sufficient to adequately supply heat at all times.

(E) Elevators, if provided.

(F) Appliances supplied as an inducement to the rental agreement.

(b) The International Property Maintenance Code (as defined in IC 32-31-10-7) applies to the rental premises.

SECTION 3. IC 32-31-10 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

Chapter 10. County Regulation of Rental Premises

Sec. 1. (a) This chapter applies only to a rental agreement for a rental premises that is entered into or renewed after December 31, 2009.

(b) This chapter applies to a landlord or tenant only with respect to a rental agreement for a rental premises that is entered into or renewed after December 31, 2009.

(c) This chapter applies to a rental premises owned by a governmental or other public entity. However, a governmental or other public entity may not be required to pay fees or civil penalties under this chapter.

Sec. 2. A waiver of the requirements set forth in this chapter by a landlord or current or former tenant, by contract or otherwise, is void.

Sec. 3. Except as otherwise provided in this chapter, the definitions in IC 32-31-3 apply throughout this chapter.

Sec. 4. As used in this chapter, "adopting ordinance" refers to the ordinance a county legislative body is required to adopt under section 9 of this chapter.

Sec. 5. As used in this chapter, "department" refers to the

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following:

(1) In a county having a consolidated city, the department of metropolitan development.

(2) In a county not having a consolidated city, the department designated or established under section 9 of this chapter.

Sec. 6. As used in this chapter, "director" refers to the director of the department. The term includes any designee of the director.

Sec. 7. As used in this chapter, "International Property Maintenance Code" refers to the International Property Maintenance Code in effect on January 1, 2010, to the extent that the International Property Maintenance Code is not inconsistent with this article.

Sec. 8. As used in this chapter, "rental premises" has the meaning set forth in IC 32-31-7-3.

Sec. 9. (a) Before January 1, 2010, the county legislative body shall adopt an ordinance as provided in this section.

(b) This subsection does not apply to a county having a consolidated city. The county legislative body shall adopt an ordinance designating or establishing a county department to implement this chapter. In designating or establishing the department, the ordinance:

(1) must provide for a director to be the head of the department; and

(2) may, subject to this chapter, organize the department as the county legislative body determines is best suited to the county.

(c) This subsection applies to all counties. The ordinance must do the following:

(1) Set civil penalties and fees not inconsistent with this chapter.

(2) Establish a rental registry fund.

(3) Require that all fees, civil penalties, and other revenue collected through the implementation of this chapter be deposited in the rental registry fund.

(4) Provide that money in the rental registry fund be used only for the implementation of this chapter.

(d) The ordinance may, subject to this chapter, provide for implementation of this chapter as the county legislative body determines is best suited to the county.

Sec. 10. (a) The owner of a rental unit must designate a person to be the owner's local agent.

(b) The local agent is responsible for all of the following:

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(1) Operating the rental premises in compliance with this chapter and all other applicable laws.

(2) Providing access to rental premises for inspections necessary to ensure compliance with the applicable laws.

(3) Maintaining a current list of the names and contact numbers of the tenants of each rental premises for which the local agent is responsible.

(4) Accepting all legal notices or service of process with respect to the rental premises or the rental property.

(c) If an owner is required to do an action under this chapter, the action is considered done if done by the local agent.

Sec. 11. (a) A rental unit must be maintained to the standards of:

(1) this article;

(2) the International Property Maintenance Code; and

(3) any applicable ordinances adopted by the county legislative body that are not inconsistent with this article or the International Property Maintenance Code.

(b) A violation of the International Property Maintenance Code is considered a violation of this chapter.

Sec. 12. (a) The landlord shall inform the tenant of the tenant's rights to a safe and healthy rental premises. Specifically, the landlord shall do all of the following:

(1) Provide each tenant, at or before the beginning of occupancy, a copy of the landlord-tenant rights and responsibilities notice prepared by the department under subsection (b). The owner shall obtain the tenant's signature confirming that the tenant has received the notice.

(2) Notify the tenant of lead-based paint hazards as required by 40 CFR Part 745, Subpart F.

(3) Ensure that employees and contractors inform the tenant of potential lead hazards before conducting renovation and repair as required by 40 CFR Part 745, Subpart F.

(4) Provide the department with documentation that the landlord has complied with this subsection if the department requests the documentation.

(b) The department, in cooperation with other appropriate agencies, shall develop and provide a landlord-tenant rights and responsibilities notice. The notice must satisfy the following:

(1) The notice must be written in English and Spanish.

(2) The notice must explain a tenant's and a landlord's basic rights and responsibilities in simple terms to ensure that

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1 minimum rental housing quality is maintained in a condition
2 that is safe and healthy for tenants.

3 (c) The department shall provide sufficient copies of the notice
4 to a landlord to permit distribution of the notice to each rental
5 premises. The department shall make the notice available in an
6 electronic format at no cost.

7 (d) The department shall provide to a landlord, upon request, a
8 copy of this chapter and the adopting ordinance.

9 Sec. 13. A person may not lease, rent, occupy, or otherwise allow
10 a rental premises to be occupied unless the rental premises has
11 been issued a certificate of compliance under this chapter.

12 Sec. 14. (a) The landlord shall register each rental premises with
13 the department as provided in this chapter and as may be provided
14 in the adopting ordinance.

15 (b) Before a rental premises is registered, the following must
16 occur:

17 (1) The rental premises must be inspected to the satisfaction
18 of the department.

19 (2) The landlord must have complied with all requirements of
20 this chapter and other laws applicable to the property.

21 (3) The landlord must pay all fees assessed in the adopting
22 ordinance for the registration and inspection of a rental
23 premises.

24 (4) Taxes or fees owed on the rental property must be paid in
25 full.

26 (5) Civil penalties imposed on the rental property under this
27 chapter must be paid in full.

28 (c) If the requirements of subsection (b) are satisfied, the
29 department shall issue a certificate of compliance for the rental
30 premises to the landlord. The landlord shall make the certificate of
31 compliance available for inspection upon request.

32 Sec. 15. (a) The department shall provide registration forms to
33 landlords for purposes of registering rental premises under section
34 14 of this chapter. The department shall also provide residential
35 rental property inspection checklists.

36 (b) A registration form must contain the following information:

37 (1) The street address of the rental premises.

38 (2) If the rental premises is one (1) of a number of units on the
39 rental property, the number of units on the rental property.

40 (3) For each owner of the rental premises, the following
41 information:

42 (A) The owner's name.

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- 1 (B) The owner's residence address.
- 2 (C) The owner's telephone number.
- 3 (D) The owner's electronic mail address, if available.
- 4 (E) The owner's mobile telephone number, if available.
- 5 (F) The owner's facsimile number, if available.
- 6 If an owner is not an individual, the required information
- 7 must be listed for the president, the general manager, or other
- 8 chief executive officer of the owner. If more than one (1)
- 9 person has an ownership interest, the required information
- 10 must be provided for each owner.
- 11 (4) The following information for the local agent:
- 12 (A) The local agent's name.
- 13 (B) The local agent's residence address.
- 14 (C) The local agent's telephone number.
- 15 (D) The local agent's electronic mail address, if available.
- 16 (E) The local agent's mobile telephone number, if
- 17 available.
- 18 (F) The local agent's facsimile number, if available.
- 19 (5) The following information for the person authorized to
- 20 collect rent from the tenants, if that person is different from
- 21 the local agent:
- 22 (A) The person's name.
- 23 (B) The person's residence address.
- 24 (C) The person's telephone number.
- 25 (D) The person's electronic mail address, if available.
- 26 (E) The person's mobile telephone number, if available.
- 27 (F) The person's facsimile number, if available.
- 28 (6) The name, address, and telephone number of any person
- 29 that holds a lien on the rental premises or the rental property
- 30 on which the rental premises is located.
- 31 (7) Proof of insurance.
- 32 (c) An inspection report of the rental premises performed by the
- 33 landlord must be included with the registration form. The
- 34 following information must be included in the inspection report:
- 35 (1) A description of the exterior conditions and interior
- 36 conditions of the rental property.
- 37 (2) A certification that conditions of the rental property
- 38 achieve the interior and exterior standards described on the
- 39 residential rental property inspection checklist developed by
- 40 the department.
- 41 (3) Other information required by the adopting ordinance.
- 42 (d) All information provided on the registration form must be

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accurate and complete.

(e) Each owner must sign the registration form.

(f) The department shall develop a consolidated registration form for multiple rental units that are part of a single rental property.

Sec. 16. (a) The landlord shall file an amended registration form with the department if there is any transfer of property ownership or if any information included on or with the original registration changes.

(b) An amended registration form must be filed not later than five (5) business days after a change described in subsection (a). A registration fee may not be charged upon the filing of an amended registration.

(c) If there is a transfer of property ownership, a new registration must be filed not later than thirty (30) days after the amended registration is filed, and a new registration fee must be paid.

Sec. 17. (a) Registration of a rental premises expires one (1) year after the date of issuance of the certificate of compliance.

(b) A landlord must renew the registration of a rental premises not later than thirty (30) days before the expiration of the certificate of compliance for the rental premises.

Sec. 18. The department shall maintain all records relating to the registration of rental premises and inspections of rental premises. These records are subject to IC 5-14-3.

Sec. 19. (a) The department shall conduct an inspection of a rental premises for any of the following reasons:

(1) All inspections for renewal of the certificate of compliance for an affected rental premises for which the landlord has been designated a delinquent landlord during the five (5) year period that the owner is so considered under section 23 of this chapter.

(2) The department receives a complaint alleging that there is a violation of this chapter.

(3) An observation by department staff of a violation of this chapter.

(4) A report or observation that a rental premises is:

(A) unoccupied and unsecured; or

(B) damaged by fire.

(5) Failure to register, reregister, or obtain a certificate of compliance for a rental premises as required by this chapter.

(6) The need to determine compliance with a notice or an

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order issued by the department.

(7) An emergency has been observed or is reasonably believed to exist by a department or county employee.

(8) A landlord or a tenant requests an inspection.

(b) Except as provided in subsection (c), the landlord shall pay the inspection fees set by the adopting ordinance for an inspection made under this section.

(c) The landlord is not liable for inspection fees under this section if:

(1) the inspection was made in response to a report of an alleged violation; and

(2) a violation was not found to exist.

Sec. 20. (a) Whenever the department receives a complaint regarding a violation of this chapter, the department shall make a record of the complaint and assign a case number to the complaint. A person designated by the director shall visually inspect the property regarding the complaint. If the director's designee determines that a violation exists, the department shall issue a written notice of violation to the landlord.

(b) A notice of violation must state all of the following:

(1) The nature of the alleged violation.

(2) The action necessary to correct the violation.

(3) The date and time before which the violation must be corrected.

(4) That, if the violation is not corrected upon reinspection, the department will pursue appropriate additional legal action and bill the landlord for any administrative costs incurred.

(c) A notice of violation must be issued either by personal service or by first class United States mail, postage prepaid. A notice of violation shall be sent to the local agent to the address:

(1) shown on the most current record of the county for the property owner's property tax statements; and

(2) of the local agent.

Sec. 21. Except as otherwise provided by law, a landlord who violates this chapter is subject to the following:

(1) If, upon completion of a rental premises inspection conducted by the department, the rental premises is found to be in violation of this chapter, the department shall provide the landlord with written notice of the violation. The department shall include on the written notice of violation information in Spanish advising Spanish speaking individuals

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where to get a translation of the notice.

(2) If a violation involves a threat to the life or safety of a tenant as determined by the department, the department shall require the landlord to correct the conditions and request a reinspection of all violations not later than forty-eight (48) hours after the date and time of the notice.

(3) If a violation does not involve a threat to the life or safety of a tenant as determined by the department, the department shall set a reinspection date before which the violation must be corrected. If a violation has been corrected before the reinspection date and after a reinspection by an authorized person, the inspection required for issuance of a certificate of compliance is considered satisfied.

(4) If a violation has not been corrected before the reinspection date, the department:

(A) may not issue a new certificate of compliance;

(B) shall revoke any existing certificate of compliance; and

(C) may take any action necessary to enforce compliance with this chapter.

(5) The landlord shall be assessed an administrative fee set by the adopting ordinance for each rental premises inspection if a violation has not been corrected after the issuance of a notice of violation.

(6) If an inspection or reinspection is scheduled and the landlord fails to appear, an administrative fee set by the adopting ordinance shall be assessed against the landlord. A subsequent inspection may not be completed until all administrative fees are paid in full.

Sec. 22. (a) The department shall do the following if a rental premises fails to comply with this chapter:

(1) Revoke the certificate of compliance for the rental premises.

(2) Designate the landlord as a delinquent landlord.

(3) Notify the landlord in writing of the violation and the delinquent landlord designation.

(b) After revocation of a certificate of compliance, the rental premises shall be vacated and may not be occupied until all violations are corrected and the department issues a new certificate of compliance for the rental premises. The department shall include the date of vacation of the rental premises with the notice provided by the department to the landlord under subsection (a).

(c) After receiving a notice under subsection (a), the landlord

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shall notify the affected tenants of:

- (1) the revocation of the certificate of compliance; and
- (2) the date by which the tenants are required to vacate the rental premises as provided in the notice given under subsection (a).

(d) The landlord shall pay costs incurred by the tenant for vacating the tenant's rental premises.

Sec. 23. (a) After a landlord has been issued a new certificate of compliance after correcting a violation, the landlord is considered a delinquent landlord with respect to the rental premises for five (5) years after the date of the designation.

(b) A delinquent landlord must pay a fee set in the ordinance for issuance of a new certificate of compliance after correcting a violation in addition to the registration fee to obtain a certificate of compliance. The additional fee is due with the annual renewal fee for the five (5) year period during which the landlord is considered a delinquent landlord.

(c) For each of the five (5) years that the landlord is considered a delinquent landlord, the department shall conduct each annual registration renewal inspection for the rental premises where the violations of this chapter existed that were the cause for the designation of the landlord as a delinquent landlord.

Sec. 24. (a) A landlord may dispute a notice of violation of this chapter or a nonrenewal or revocation of a certificate of compliance by filing a written request for review with the director. A request for review must be filed not later than ten (10) days after receiving a notice of violation or of nonrenewal or revocation of a certificate of compliance.

(b) Upon receiving a request for review, the department may not take further action until after the director notifies the recipient of the decision of the request for review. The director's decision of the matter is considered the department's final determination of the matter.

Sec. 25. (a) The director may bring an action for injunctive and monetary relief in a court of the county that has jurisdiction against a person alleged to have violated this chapter. An action under this section shall be brought in the name of the department.

(b) The director may bring an action for mandatory injunction directing a landlord or other person to have a tenant vacate the tenant's rental premises for a violation of this chapter, with the landlord being responsible to the tenant for all the tenant's costs for vacating the rental premises.

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1 **Sec. 26. (a) The director and law enforcement officers may make**
 2 **inspections of all rental premises within the county to enforce this**
 3 **chapter.**

4 **(b) The director and law enforcement officers may enter upon**
 5 **any property at any reasonable time to carry out duties in the**
 6 **enforcement of this chapter, unless the landlord or tenant refuses**
 7 **to permit entry.**

8 **(c) Before entering a rental premises not open to the public, the**
 9 **director or a law enforcement officer shall advise the landlord or**
 10 **tenant that the landlord or tenant is not required to grant entry**
 11 **without the presentation of an administrative search warrant.**

12 **(d) If a landlord or tenant refuses entry, the department may**
 13 **make application to any judge having jurisdiction within the**
 14 **county for the issuance of an administrative search warrant. The**
 15 **application must identify the property upon which entry is sought**
 16 **and the purpose for which entry is sought. The application must**
 17 **state:**

18 **(1) the facts giving rise to the belief that a condition which is**
 19 **a violation of this chapter exists; or**

20 **(2) that a violation in fact exists and must be corrected to the**
 21 **best of the affiant's belief.**

22 **(e) If a warrant is issued, the warrant shall order the landlord**
 23 **or tenant to permit entry to the director or law enforcement**
 24 **officers for the purposes stated in the warrant.**

25 **(f) The director and law enforcement officers may not enter a**
 26 **rental premises not open to the public without the permission of**
 27 **the landlord or tenant unless an administrative search warrant is**
 28 **obtained.**

29 **Sec. 27. (a) A civil penalty as set in the adopting ordinance may**
 30 **be imposed for each violation. Each day a violation is permitted to**
 31 **continue constitutes a separate violation.**

32 **(b) A civil penalty may not be more than two thousand five**
 33 **hundred dollars (\$2,500).**

34 **(c) A previous violation of this chapter may be considered in**
 35 **determining the penalty assessed. However, a second or subsequent**
 36 **violation at the same property within an eighteen (18) month**
 37 **period that is not a repeat violation shall be subject to a lower civil**
 38 **penalty as provided in the adopting ordinance.**

39 **(d) A finding that a violation occurred or an admission that a**
 40 **violation occurred is not required to assess and recover a civil**
 41 **penalty if the person subject to the civil penalty agrees to pay the**
 42 **penalty under:**

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(1) either an agreed judgment or consent decree in a court action for ordinance violation; or

(2) a compliance agreement in an administrative adjudication.

(e) A civil penalty of two thousand five hundred dollars (\$2,500) shall be imposed for each repeat violation.

(f) The department shall publish the following information regarding repeat violations of this chapter:

(1) A list of the names of landlords and tenants who have been cited for a repeat violation under this chapter.

(2) The addresses of the affected properties.

The director shall determine the frequency of publication.

Sec. 28. (a) In addition to, or instead of, the remedies provided by this chapter, if, upon inspection, the department determines that a violation exists, the department may initiate an action in court or an administrative adjudication for ordinance violation against the landlord. A court action or an administrative adjudication must be initiated as provided in the adopting ordinance.

(b) The department may file a court action or begin an administrative adjudication for any violation of this chapter, even if the violation is later corrected.

(c) The department may pursue any other remedies provided by law for violations of this chapter in addition to the remedies provided by this chapter.

Sec. 29. (a) A person may not bring or threaten to bring an action retaliating against a tenant or other person for requesting or receiving an inspection by the department.

(b) A tenant may not be evicted or retaliated against for any reason while the tenant continues to make timely rental payments during the time an action to enforce this chapter is pending.

Sec. 30. A rental premises used in violation of this chapter is declared to be a common nuisance, and the landlord or the tenant of the rental premises is liable for maintaining a common nuisance.

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